

**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY**

IN THE MATTER OF:

MARVIN LEE BARRETT

\$20,101.00 in U.S. Currency

SEIZED FROM: MARVIN BARRETT

SEIZURE DATE: JUNE 7, 2005

CLAIMANT: MARVIN BARRETT

DOCKET NO: 19.01-086851J

D.O.S. NO. E3049

INITIAL ORDER

This matter was heard on January 18, 2006, in Chattanooga, Tennessee, before Cara E. Harr, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. The State was represented by Staff Attorney Thomas Henley. The Claimant, Marvin Barrett, was present and represented by counsel, Roger E. Jenne.

Prior to the hearing, the State argued that the Claimant had not shown standing as to the ownership of the money pursuant to Rule 1240-2-2-.15. In reviewing Rule 1240-2-2-.15 and Tennessee Code Annotated §53-11-201(f) (1), the code states that the commissioner shall not allow the claim unless certain prerequisites are met. It would appear that the State was untimely in its motion since the claim had been allowed and was ready for consideration. At the time of the hearing, however, evidence was presented by the Claimant which established his standing in this case.

The issue at this hearing was whether the captioned property, i.e., twenty thousand one hundred and one dollars (\$20,101.00), should be forfeited to the State for violation of T.C.A. §53-11-201 et seq and 40-33-201 et seq. After consideration of the record, it is determined that the captioned property of twenty thousand one hundred and one dollars (\$20,101.00) should be returned to the Claimant.

At the close of the State's proof, Claimant's attorney made a motion for a directed verdict. The motion was taken under advisement. The motion is denied and therefore this decision is based upon the following Findings of Facts and Conclusions of Law.

FINDINGS OF FACT

1. On June 7, 2005, the Claimant and his girlfriend were stopped by K-9 Officer Andy Ratcliff for speeding. Claimant presented his license to the officer and was asked to step out of the vehicle.

2. According to the officer, the Claimant appeared nervous. Claimant was asked if he had any drugs in the vehicle or large amounts of currency. The Claimant said no and gave consent to search.

3. On the back seat, the officer found a shoebox container with \$20, 010.00 in U. S. currency. The money was in bundles of one thousand dollars (\$1,000.00) in different dollar increments. In the trunk, Officer Ratcliff found a box of Swisher cigars, a fabric softener sheet and some baggies. Officer Ratcliff testified that fabric softener sheets are sometimes used to mask the smell of drugs. However, no drugs or drug residue was found in the vehicle by Officer Ratcliff. Officer Ratcliff did not have the dog search for drugs either.

4. According to the Officer Ratcliff, the Claimant said he had been in Knoxville to purchase “some wheels”. He also told the officer that he and his girlfriend had eaten with a friend at O’Charleys and were returning to Georgia. The officer wrote the Claimant a written warning for speeding, detained the Claimant and his girlfriend and transported them to the Cleveland Police Department. Claimant and his girlfriend were subsequently released after the \$20, 010.00 was seized by the Department pursuant to T.C.A. §53-11-201 et seq. The Claimant’s vehicle was not seized.

5. Claimant is employed for Honey Baked Hams and has been employed by the company for three (3) years. Claimant has also been employed at times for Redmond Hospital and Chili’s while working at Honey Baked Hams. Claimant won eleven thousand four hundred and fifty dollars (\$11,450.00) through the Georgia Lottery on July 12, 2004. Claimant gave his lottery winnings to his mother to save for him, as well as, money every few months for her to save. Claimant lives at home and has no expenses.

6. Claimant’s mother testified that her son came to her and asked for the money because he wanted to buy a car in Knoxville. Ms. Marbury gave the Claimant the box of money, the day before the seizure, which was found by the officer in the backseat.

APPLICABLE LAW

1. Rule 1340-2-2-.15(4) states “[t]he department has the burden of proof as to the illegal use of the seized property pursuant to the Act”.

2. Pursuant to T.C.A. 53-11-451(a) (6) (A), “Goods subject to forfeiture – Seizure-Disposition-

(a) The following are subject to forfeiture: ...

(6)(A) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989... compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act, ... to the extent of the interest of an owner, by reason of any act or omission established by such owner to have been committed or omitted without such owner's knowledge or consent; ...”

CONCLUSIONS AND ANALYSIS OF LAW

1. The statute states that “all moneys,. . . used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act is subject to forfeiture.

2. According to the Goldsmith court, in a proceeding to forfeit funds under the Drug Control Act, “the burden of proof rests upon the state, which must establish by a preponderance of the evidence, or as the more probable conclusion, that the money to be forfeited was received in consideration for or in exchange for a controlled substance.” (Goldsmith v. Roberts, 622 S.W.2d 438 (Tenn. Ct. App. 1981)

3. The State failed to meet that burden. The Claimant testified that he has been employed with Honey Baked Hams in Georgia for the past three years. Claimant submitted a paycheck from his company (Exhibit 2) showing his bi-weekly income. Claimant also presented his social security statement (Exhibit 5) showing his taxed social security earnings from 2002 to 2004. Claimant further presented evidence of his lottery winnings of eleven thousand four hundred and fifty dollars (\$11,450.00) from July 2004. (Exhibit 3)

4. Both the Claimant and his mother, Shelly Marbury, testified that over the past three years the Claimant has given his mother one thousand dollars (\$1,000.00) every two (2) to three (3) months for her to hold and save for the Claimant. The Claimant would place a rubber band around the money and his mother would store the money in a box. Both parties also testified that the Claimant gave his mother the lottery winnings in 2004 for her to save. Furthermore, Ms. Marbury testified that her son came to her the day before the seizure and asked for the money because he wanted to buy a car in Knoxville.

5. The officer testified that he seized the money because the Claimant was acting nervous, there was a McDonald's receipt and bag found in the car, the large amount of the money in one thousand dollar bundles and the items found in the truck. The officer therefore concluded that the money was proceeds from drug sales.

6. However, there was no proof that the Claimant had any connection with illegal drugs. There were no drugs or drug residue found anywhere in the vehicle. The officer did not even alert his dog to search the vehicle for drugs. The officer testified that he did not believe the Claimant's story about eating with friends in Knoxville because he found a McDonalds' receipt from Sweetwater, Tennessee. However, the officer did not know when the food had been purchased or if it was related to this trip. The Claimant, on the other hand, presented evidence that he had been gainfully employed for the past three years and that he had won eleven thousand four hundred and fifty dollars (\$11,450.00) from the Georgia lottery in June 2004. The Claimant further explained why the money was bundled in packs of one thousand dollars


(\$1,000.00) and both he and his mother testified that he had been saving his money for the past three (3) years.

7. Considering all the evidence, the State did not prove by a preponderance of the evidence that the Claimant had or was going to sell or purchase illegal drugs with the seized money. Therefore, the statute mandates that the twenty thousand one hundred and one dollars (\$20,010.00) seized by the Cleveland Police Department be returned to the Claimant. It is therefore **ORDERED** that the twenty thousand one hundred and one dollars (\$20,010.00) be returned to the Claimant.

This Initial Order entered and effective this 16th day of February 2006.

Cara E. Harr
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 16th day of February 2006.



Charles C. Sullivan, II, Director
Administrative Procedures Division